



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शुक्रवार, 13 जनवरी, 2023 / 23 पौष, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 24th November, 2022

No. Shram (A) 3-8/2021 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette” :—

Sl. No.	Case No	Petitioner	Respondent	Date of Award/Order
1.	Ref.45/2020	Group Mazdoor Sangh	Himachal Futuristic Communication Ltd.	01.10.2022
2.	Ref.129/2020	Group Mazdoor Sangh	Himachal Futuristic Communication Ltd.	01.10.2022
3.	Ref.130/2020	Group Mazdoor Sangh	Himachal Futuristic Communication Ltd.	01.10.2022
4.	Ref.131/2020	Sh. Hari Chand	Himachal Futuristic Communication Ltd.	01.10.2022
5.	App.106/2020	Sh. Harinder Kumar	Himachal Futuristic Communication Ltd.	01.10.2022
6.	App.107/2020	Sh. Om Prakash	Himachal Futuristic Communication Ltd.	01.10.2022
7.	App.108/2020	Sh. Tarakki Sharma	Himachal Futuristic Communication Ltd.	01.10.2022
8.	App.109/2020	Sh. Sanjay Kumar	Himachal Futuristic Communication Ltd.	01.10.2022
9.	App.110/2020	Sh. Dev Dutt Sharma	Himachal Futuristic Communication Ltd.	01.10.2022
10.	App.111/2020	Smt. Meena Kumari	Himachal Futuristic Communication Ltd.	01.10.2022
11.	App.112/2020	Smt. Nisha Sharma	Himachal Futuristic Communication Ltd.	01.10.2022
12.	App.113/2020	Smt. Radha Puri	Himachal Futuristic Communication Ltd.	01.10.2022
13.	App.114/2020	Smt. Suman Lata	Himachal Futuristic Communication Ltd.	01.10.2022
14.	App.115/2020	Smt. Surindra Chauhan	Himachal Futuristic Communication Ltd.	01.10.2022
15.	App.116/2020	Manoj Kumar Panwar	Himachal Futuristic Communication Ltd.	01.10.2022
16.	App.117/2020	Sh. Chain Singh	Himachal Futuristic Communication Ltd.	01.10.2022
17.	App.118/2020	Sh. Hari Ram	Himachal Futuristic Communication Ltd.	01.10.2022
18.	App.119/2020	Smt. Indu Bala	Himachal Futuristic Communication Ltd.	01.10.2022
19.	App.120/2020	Smt. Rekha Dhiman	Himachal Futuristic Communication Ltd.	01.10.2022
20.	App.121/2020	Smt. Anjana Thakur	Himachal Futuristic Communication Ltd.	01.10.2022
21.	App.122/2020	Smt. Anjana Kumari	Himachal Futuristic Communication Ltd.	01.10.2022
22.	App.123/2020	Smt. Reena Sharma	Himachal Futuristic Communication Ltd.	01.10.2022
23.	App.124/2020	Sh. Vijay Kumar	Himachal Futuristic Communication Ltd.	01.10.2022
24.	App.125/2020	Smt. Indu Sharma	Himachal Futuristic Communication Ltd.	01.10.2022

25.	App.126/2020	Sh. Rajindra Kumari	Himachal Futuristic Communication Ltd.	01.10.2022
26.	App.127/2020	Sh. Mahesh Kumar	Himachal Futuristic Communication Ltd.	01.10.2022
27.	App.128/2020	Sh. Vinod Kumar	Himachal Futuristic Communication Ltd.	01.10.2022
28.	App.129/2020	Sh. Ramesh Thakur	Himachal Futuristic Communication Ltd.	01.10.2022
29.	App.130/2020	Smt. Nita Mehta	Himachal Futuristic Communication Ltd.	01.10.2022
30.	App.131/2020	Sh. Ishwar Dutt	Himachal Futuristic Communication Ltd.	01.10.2022
31.	App.132/2020	Sh. Madan Lal	Himachal Futuristic Communication Ltd.	01.10.2022
32.	App.133/2020	Smt. Premi Devi	Himachal Futuristic Communication Ltd.	01.10.2022
33.	App.134/2020	Smt. Ritu Kumari	Himachal Futuristic Communication Ltd.	01.10.2022
34.	App.135/2020	Sh. Sita Ram	Himachal Futuristic Communication Ltd.	01.10.2022
35.	App.136/2020	Smt. Uma Devi	Himachal Futuristic Communication Ltd.	01.10.2022
36.	App.137/2020	Smt. Bimla Nagta	Himachal Futuristic Communication Ltd.	01.10.2022
37.	App.138/2020	Smt. Sita Devi	Himachal Futuristic Communication Ltd.	01.10.2022
38.	App.139/2020	Sh. Ranjeet Singh	Himachal Futuristic Communication Ltd.	01.10.2022
39.	App.140/2020	Sh. Sunil Kumar	Himachal Futuristic Communication Ltd.	01.10.2022
40.	App.141/2020	Sh. Babu Ram	Himachal Futuristic Communication Ltd.	01.10.2022
41.	App.142/2020	Smt. Amriti Devi	Himachal Futuristic Communication Ltd.	01.10.2022
42.	App.143/2020	Smt. Sharda Thakur	Himachal Futuristic Communication Ltd.	01.10.2022
43.	App.144/2020	Smt. Punam Chauhan	Himachal Futuristic Communication Ltd.	01.10.2022
44.	App.145/2020	Smt. Usha Thakur	Himachal Futuristic Communication Ltd.	01.10.2022
45.	App.146/2020	Sh. Sikander Kumar	Himachal Futuristic Communication Ltd.	01.10.2022
46.	App.147/2020	Smt. Meena Thakur	Himachal Futuristic Communication Ltd.	01.10.2022
47.	App.148/2020	Smt. Krishna Devi	Himachal Futuristic Communication Ltd.	01.10.2022

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.).

**BEFORE RAJESH TOMAR PRESIDING JUDGE H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 45 of 2020
Instituted on : 21-07-2020
Decided on : 01-10-2022

The General Secretary, Himachal Pradesh Futuristic Communication Ltd., Group Mazdoor Sangh, Regd. No. 747, o/o HFCL, Electronic Complex, Chambaghat, District Solan, H.P.

. .Petitioner.

VERSUS

The Factory Manager M/s Himachal Futuristic Communication Ltd., Electronics Complex, Chambaghat, Tehsil & District Solan, H.P.

. .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri J. C. Bhardwaj, AR
For Respondents : Shri Vikas Chauhan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 24.02.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the discontinuance of collection of union subscription on monthly basis from the wages/ salary of each member of the registered trade union i.e. Himachal Futuristic Communication Ltd. Group Mazdoor Sangh, Regd. No. 747, o/o HFCL Electronic Complex, Chambaghat, Solan (H.P.) with prior notice to the union by the management of M/s Himachal Futuristic Communication Ltd. Electronics Complex, Chambaghat, Tehsil & Distt. Solan (H.P.) is proper and justified? If not, to what relief the above said members of trade union are entitled to?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri J. C. Bhardwaj, AR had appeared on behalf of the petitioner whereas Shri Vikas Chauhan, Advocate had appeared for respondent. .

3. To the fore, Shri Anoop Kumar, President of the Mazdoor Sangh, on behalf of the workers has stated at the bar that he does not want to proceed further with the present reference. To this effect his statement has been recorded separately and placed on record.

4. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the petitioner does not want to proceed further with the Industrial Dispute raised from the side of the petitioner, hence, the same is hereby ordered to be answered accordingly and the award is passed as per the statement of Shri Anoop Kumar, President of petitioner union/group of Mazdoor Sangh, which shall form the integral part and parcel of this award.

5. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.10.2022

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**BEFORE RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 129 of 2020
Instituted on : 21-07-2022
Decided on : 01-10-2022

The General Secretary, Himachal Pradesh Futuristic Communication Ltd., Group Mazdoor Sangh, Regd. No. 747, o/o HFCL, Electronic Complex, Chambaghat, District Solan, H.P.
.. *Petitioner.*

VERSUS

The Factory Manager M/s Himachal Futuristic Communication Ltd., Electronics Complex, Chambaghat, Tehsil & District Solan, H.P.
.. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri J.C. Bhardwaj, AR
For Respondent : Shri Vikas Chauhan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 27.06.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether transfer of Mrs. Pushpa Kumari (Employee Code: 700132) Technical Assistant, who is Joint Secretary of the recognized and registered Trade Union of the Factory by the management of M/s Himachal Futuristic Communication Ltd. Electronics Complex, Chambaghat, Tehsil & Distt. Solan, H.P.-173213, from Himachal Futuristic Communication Ltd. Electronics Complex, Chambaghat, Tehsil & Distt. Solan to HFCL Unit V(Kather Bye Pass, Solan) on administrative grounds as per clause 8 of her appointment letter and clause 14 of the Cetified Standing Orders of the factory w.e.f. 14.2.2019 is proper and justified? If not, to what relief the above said woker is entitled to from above management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri J.C. Bhardwaj, AR had appeared on behalf of the petitioner whereas Shri Vikas Chauhan, Advocate had appeared for respondent.

3. To the fore, Shri Anoop Kumar, President of the Mazdoor Sangh, on behalf of the petitioner/claimant has stated at the bar that he does not want to proceed further with the present reference. To this effect his statement has been recorded separately and placed on record.

4. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the petitioner does not want to proceed further with the Industrial Dispute raised from the side of the petitioner, hence, the same is hereby ordered to be answered accordingly and the award is passed as per the statement of Shri Anoop Kumar, President of petitioner union/group of mazdoor sangh, which shall form the integral part and parcel of this award.

5. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
01.10.2022

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**BEFORE RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 130 of 2020
Instituted on : 21-07-2020
Decided on : 01-10-2022

The General Secretary, Himachal Pradesh Futuristic Communication Ltd., Group Mazdoor Sangh, Regd. No. 747, o/o HFCL, Electronic Complex, Chambaghat, District Solan, H.P.
..Petitioner.

VERSUS

The Factory Manager M/s Himachal Futuristic Communication Ltd., Electronics Complex, Chambaghat, Tehsil & District Solan, HP.
..Respondent. .

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri J.C. Bhardwaj, AR
For Respondent : Shri Vikas Chauhan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 27.06.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether deduction of wages/ subsistence allowance by the management of M/s Himachal Futuristic Communication Ltd. Electronics Complex, Chambaghat, Tehsil & Distt. Solan, from the monthly wages/subsistence allowance of three suspended workers namely Sh. Anup Kumar Sharma General Secretary, Sh. Ramesh Dutt President & Smt. Pushpa Kumari Joint Secretary of the registered trade union, in the name and style of Himachal Futuristic Communication Ltd. Group Mazdoor Sangh, Regd. No. 747, duly recognized in the Factory, for not marking their attendance in the factory premises at the scheduled time and without any intimation in this regard to their above employer / management, before or after participation in the conciliation proceedings scheduled to be held on 05.8.2019 & 08.8.2019 in the office of the Conciliation Officer, is proper and justified? If not, what financial benefit or compensation the above said workers are entitled to from above management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri J.C Bhardwaj, AR had appeared on behalf of the petitioner whereas Shri Vikas Chauhan, Advocate had appeared for respondent.

3. To the fore, Shri Anoop Kumar, President of the Mazdoor Sangh on behalf of the petitioner/claimant has stated at the bar that he does not want to proceed further with the present reference. To this effect his statement has been recorded separately and placed on record.

4. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the petitioner does not want to proceed further with the Industrial Dispute raised from the side of the petitioner, hence, the same is hereby ordered to be answered accordingly and the award is passed as per the statement of Shri Anoop Kumar, President of petitioner union/group of mazdoosangh, which shall form the integral part and parcel of this award.

5. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Sd/-

Announced:
01.10.2022

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**BEFORE RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 131of 2020
Instituted on : 21-07-2020
Decided on : 01-10-2022

Hari Chand s/o Shri Munu Ram r/o Village Dhawala Tikkari, P.O. Dhawala, Tehsil Kandaghat, District Solan, H.P. . .Petitioner.

VERSUS

1. The Factory Manager M/s Himachal Futuristic Communication Ltd., Electronics Complex, Chambaghat, Tehsil & District Solan, H.P.
2. M/s Golden Eagle Security Services, SCO 2475-76, Sector 22-C, Chandigarh (UT)
3. Satnam Singh Ahluwalia, Group Lease Network, SCO 866, NAC, Manimazra Chandigarh (UT). Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri J.C. Bhardwaj, AR
For Respondents : Shri Vikas Chauhan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.06.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether alleged termination of services of Shri Hari Chand s/o Late Sh. Munu Ram, Village DhawalaTikkari, P.O. Dhawala, Tehsil Kandaghat, Distt. Solan (H.P.) w.e.f. 24.7.2019 after receiving his full and final dues amounting to Rs. 45,821/- by (i) M/s Golden Eagle Security Services, SCO 2,475-76, Sector 22 C, Chandigarh, (ii) Sh. Satnam Singh Ahluwalia, Group Lease Network, SCO-866, NAC Manimajra, Chandigarh & (iii) the Factory Manager, M/s Himachal Futuristic Communication Ltd. Electronics Complex, Chambaghat, Tehsil & Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employers / management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri J.C Bhardwaj, AR had appeared on behalf of the petitioner whereas Shri Vikas Chauhan, Advocate had appeared for respondent.

3. To the fore, Shri J.C. Bhardwaj, AR, on behalf of the petitioner/claimant for the petitioner has stated at the bar that he does not want to proceed further with the present reference. To this effect his statement has been recorded separately and placed on record.

4. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the petitioner does not want to proceed further with the Industrial Dispute raised from the side of the petitioner, hence, the same is hereby ordered to be answered accordingly and the award is passed as per the statement of Shri J.C. Bhardwaj, AR for the petitioner, which shall form the integral part and parcel of this award.

5. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced 01.10.2022

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**BEFORE RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 106 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Harinder Kumar S/o Shri Nek Ram, r/o Village Kalog, P.O. Kandaghat, District Solan H.P.,
through Shri J. C. Bhardwaj, H.P. AITUC HQ D-1, 3rd Floor, City Centre Plaza, Solan, District
Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic
Communication Chambaghat Solan, H.P., through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Harinder Kumar (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government *i.e.* State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union *i.e.* HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 18.01.2006 and presently working as Junior Engineer on monthly salary of ₹18,300/-, at the time of his transfer from HFCL Solan to another establishment *i.e.* HTL Ltd., 57, GST Road Guindy Chennai (Tamil Nadu), vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred on 18.07.2020, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders,

hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme *w.e.f.* 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location *i.e.* Chambaghat to new place of shifting *i.e.* Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Harinder Kumar stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Chennai. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and

victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e.* **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Chennai vide transfer order dated 28.07.2020. There is

again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the

petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the

petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/ industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Chennai) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Chennai is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**BEFORE RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 107 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Om Prakash Sharma s/o Shri L. D. Sharma, r/o Village Hathoon, P.O. & Tehsil Kandaghat District Solan, H.P. through Shri J. C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .*Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP, through its Factory Manager. . .*Respondent. .*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Om Parkash (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 30.04.1994 and presently working as Senior Technician on monthly salary of ₹ 23,750/-, at the time of his transfer from HFCL Solan to another establishment i.e. 19 R.N Mukharjee Road, Main Building 2nd Floor, BBD Bag, Kolkata, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put to strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme *w.e.f.* 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to

the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? ..*OPP*.
2. Whether the application is not maintainable in the present form, as alleged? ..*OPR*.
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? ..*OPR*.
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

- | | |
|-------------|---|
| Issue no. 1 | Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith. |
| Issue no. 2 | No |
| Issue No. 3 | No |
| Relief. | Application allowed, as per operative part of order/award. |

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Om Parkash stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to BBD Bag, Kolkata. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS

nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e. Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.*

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to BBD Bag, Kolkata vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication *vide* notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

"Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?"

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of

following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (BBD Bag, Kolkata) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to BBD Bag, Kolkata is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide

order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 108 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Tarakki Chand Sharma S/o Shri B.N Sharma Village Bah P.O Gahar, Tehsil Ghumarwin, District Bilaspur, HP, H.P Through Shri J.C Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP, Through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Tarakki Sharma (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 11.10.1995 and presently working as Sr. Technical Assistant, on monthly salary of ₹ 18,400/-, at the time of his transfer from HFCL Solan to another establishment/site i.e Officer Commanding Signals, Project NFS, Sukna, West Bengal, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change

in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray forever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020, had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Tarakki Chand Sharma, stepped into the witness box as (PW-1), and tendered in to evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Sukna, West Bengal. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S' Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019

(P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent

company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e. Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.*

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Sukna, West Bengal vide transfer order dated 24.8.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

"Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications

Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?"

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Sukna, West Bengal) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order

dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Sukna, West Bengal, is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 109 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Sanjay Kumar s/o Shri Bidhi Chand, VPO Dadh, Tehsil Palampur, District Kangra H.P. through Shri J.C Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P.Applicant

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P., Through its Factory Manager. . Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947.

For the Applicant : Shri J.C Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Sanjay Kumar (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 10.09.2004 and presently working as Technical Assistant, on monthly salary of ₹ 16,700/-, at the time of his transfer from HFCL Solan to another establishment/site i.e. Tezpur, Officer Commanding Signals Project, NFS, Tezpur, Assam, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent

authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020, had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number

of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location *i.e.* Chambaghat to new place of shifting *i.e.* Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

- | | |
|-------------|---|
| Issue no. 1 | Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith. |
| Issue no. 2 | No |

Issue No. 3 No

Relief Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Sanjay Kumar stepped into the witness box as (PW-1), and tendered in to evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Tezpur, Assam. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in

any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e. Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.*

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government *i.e.* the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in

violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Tezpur, Assam vide transfer order dated 24.8.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile

the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the

transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Tezpur, Assam) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Tezpur, Assam, is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 110 of 2020

Instituted on : 24-12-2020

Decided on : 01-10-2022

Dev Dutt Sharma S/o Shri B.D Sharma, Village Tikkar, P.O. Salogra, Tehsil & District Solan, H.P. through Shri J.C Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P., through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Dev Dutt Sharma (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 08.09.1994 and presently working as Junior Engineer on monthly salary of ₹ 23,750/-, at the time of his transfer from HFCL Solan to another establishment i.e. Warehouse Safexpress Pvt. Ltd., Changsari, NH 31, Opposite Army Camp Kamrup Guwahati, Assam vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was lateron prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders

only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is

illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020, had not joined his services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Kamrup, Guwahati, Assam.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO.1.

15. In order to substantiate its case, the petitioner Shri Dev Dutt Sharma, stepped into the witness box as (PW-1), and tendered in to evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Kamrup, Guwahati, Assam. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e. Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.*

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Kamrup, Guwahati, Assam vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the

condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred

place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Kamrup, Guwahati, Assam) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Kamrup, Guwahati, Assam is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020, is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 111 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Meena Kumari d/o Shri Nettar Singh c/o N. S. Thakur, NS Jeans, Near HFCL, District Solan, H.P. through Shri J. C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate
ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Meena Kumari (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 11.09.1989 and presently working as Senior Technician Assistant on monthly salary of ₹ 29,157/-, at the time of her transfer from HFCL Solan to another establishment i.e. 19 RN Mukerjee Road, Main

Building 2nd Floor, BBD Bag, Kolkata, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and

appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138

- of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . .OPP.
2. Whether the application is not maintainable in the present form, as alleged? . .OPR.
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? OPR.
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No .3	No
Relief	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Meena Kumari stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to BBD Bag, Kolkata. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as

reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e.* **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government *i.e.* the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to BBD Bag, Kolkata vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any

concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of

India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the

petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (BBD Bag, Kolkata) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to BBD Bag, Kolkata is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 112 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Nisha Sharma w/o Shri Rajinder Sharma, Village Kohari, P.O. Kandaghat, District Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .*Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P., through its Factory Manager. . .*Respondent*.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Nisha Sharma (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.02.1993 and presently working as Technician Assistant on monthly salary of ₹ 23,958/-, at the time of her transfer from HFCL Solan to another establishment i.e. 19 RN Mukerjee Road, Main Building 2nd Floor, BBD Bag, Kolkata, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no.

138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred *vide* transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was

obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Nisha Sharma stepped into the witness box as (PW-1), and tendered in to evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to BBD Bag, Kolkata. She admitted

that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belong to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which is prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Delhi Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which cease to exist in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreover, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e. Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.*

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit.

There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to BBD Bag, Kolkata vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the

transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (BBD Bag, Kolkata) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to BBD Bag, Kolkata is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally

maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 113 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Radha Puri w/o Shri Shiv Kumar Puri, House No. 101, Near DAV School Bye-Pass Kather, Solan, H.P. Through Shri J. C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Radha Puri (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government *i.e.* State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union *i.e.* HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.02.1995 and presently working as Technical Assistant on monthly salary of ₹ 23,188/-, at the time of her transfer from HFCL Solan to another establishment *i.e.* HTL Ltd., 57, GST Road Guindy, Chennai, Tamil Nadu, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for

restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders

have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Radha Puri stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made there o in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Guindy, Chennai, Tamil Nadu. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers

had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law *i.e.* **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government *i.e.* the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen,

which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Guindy, Chennai, Tamil Nadu vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Guindy, Chennai, Tamil Nadu) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Guindy, Chennai, Tamil Nadu is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 114 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Suman Lata W/o Shri Leela Dutt, r/o Village Kather, P.O. Chambaghat, District Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .*Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . .*Respondent*.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Suman Lata (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 11.09.1989 and presently working as Senior Technician Assistant on monthly salary of ₹ 29,157/-, at the time of her transfer from HFCL Solan to another establishment i.e. 19 RN Mukerjee Road, Main Building 2nd Floor, BBD Bag, Kolkata, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put to strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to

the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e Hyderabad;

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP*.
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR*.
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR*.
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Suman Lata stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made ther to in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to BBD Bag, Kolkata. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS

nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to BBD Bag, Kolkata vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

"Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?"

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of

prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (BBD Bag, Kolkata) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to BBD Bag, Kolkata is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific

directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 115 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Surindra Chauhan w/o Shri Bhim Singh, Police Line Solan, Quarter No. 14 Bye Pass Kathar, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .Applicant .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., Through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Surindra Chauhan(**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.10.2003 and presently working as Technician on monthly salary of ₹ 14,660/-, at the time of her transfer from HFCL Solan to another establishment i.e HTL Ltd., 57, GST Road Guindy, Chennai, Tamil Nadu, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent

company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number

of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No

Issue No. 3 No

Relief. Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Surindra Chauhan stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Guindy, Chennai, Tamil Nadu. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in

any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the

respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Guindy, Chennai, Tamil Nadu vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer

submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further

admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman mala fide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Guindy, Chennai, Tamil Nadu) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Guindy, Chennai, Tamil Nadu is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 116 of 2020

Instituted on : 24-12-2020
Decided on : 01-10-2022

Manoj Kumar Panwar s/o Shri Krishan Chand Panwar C/o Manak Chand, Ward No.3, Mangla Niwas, Bye-Pass Road Kather, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P.

. .Applicant .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan H.P., Through its Factory Manager.

. .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Manoj Kumar (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 16.03.2006 and presently working as Junior Engineer, on monthly salary of ₹ 18,300/-, at the time of his transfer from HFCL Solan to another establishment i.e Warehouse Plot No.603, Village Ruka, Near Ruck Dam, Ranchi Jharkhand, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was lateron prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had

transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020, had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Manoj Kumar stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Ranchi Jharkhand. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that

10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own**

Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Ranchi Jharkhand vide transfer order dated 24.8.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before

the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an

expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Ranchi Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Ranchi Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 117 of 2020

Instituted on : 24-12-2020

Decided on : 01-10-2022

Chain Singh s/o Shri Laiq Ram, r/o Village Patti, P.O Basal, Tehsil & District Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., Through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Chain Singh (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 18.11.1994 and presently working as Technician Assistant on monthly salary of ₹ 23,333/-, at the time of his transfer from HFCL Solan to another establishment i.e. 19 RN Mukerjee Road, Main Building 2nd Floor, BBD Bag, Kolkata, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19, and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a

settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPP.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPP.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith

Issue no. 2 No.

Issue No.3 No.

Relief Application allowed, as per operative part of order/award

REASONS FOR FINDINGS.

ISSUE NO.1.

15. In order to substantiate its case, the petitioner Shri Chain Singh stepped into the witness box as (PW-1), and tendered in to evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to BBD Bag, Kolkata. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

" Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to BBD Bag, Kolkata vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be

subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of

transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (BBD Bag, Kolkata) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to BBD Bag, Kolkata is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF.

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Application Number : 118 of 2020

Instituted on : 24-12-2020

Decided on : 01-10-2022

Hari Ram c/o Bhola Singh Niwas, Near Tar Factory, Saproon Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. **...Applicant**

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P., through its Factory Manager. **..Respondent.**

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR.

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Hari Ram (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.07.1992 and presently working as Sr. Technical Assistant, on monthly salary of ` 26,604/-, at the time of his

transfer from HFCL Solan to another establishment/site i.e Officer Commanding Signals, Project, NFS, Tezpur, Assam vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and

appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020, had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .OPP.

2. Whether the application is not maintainable in the present form, as alleged? . . . *OPR.*

3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . . *OPR.*

4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under

Issue No. 1 Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.

Issue No. 2 No.

Issue No. 3 No.

Relief. Application allowed, as per operative part of order/award

REASONS FOR FINDINGS.

ISSUE NO.1.

15. In order to substantiate its case, the petitioner Shri Hari Ram, stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Tezpur, Assam. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the

respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory

or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these

petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Tezpur, Assam vide transfer order dated 24.8.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the

respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here

that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/ industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Tezpur, Assam) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with mala fide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Tezpur, Assam, is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020** is

hereby set aside and quashed. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer.**

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 119 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Indu Bala w/o Raman Sharma, Village Bajrol, Near Home Guard Office, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P., through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Indu Bala (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised

by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 22.02.1991 and presently working as Technical Assistant on monthly salary of ₹ 23,958/-, at the time of her transfer from HFCL Solan to another establishment i.e. Warehouse Plot No. 603, Village Ruka, Near Ruck Dam, Ranchi, Jharkhand, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO.1.

15. In order to substantiate its case, the petitioner Ms. Indu Bala, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Ranchi, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be

transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand

charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Ranchi, Jharkhand vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the

eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.)

ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Ranchi, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with mala fide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Ranchi, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the

respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 120 of 2020
Instituted on : 24.12.2020
Decided on : 01.10.2022

Rekha Dhiman w/o Pawan Kumar Dhiman, Near HFCL Basal Road, Chambaghat, Solan, H.P. Through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .*Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., Through its Factory Manager. . .*Respondent*.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J. C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the

pendency of reference petition no. 138 of 2019, preferred by Ms. Rekha Dhiman (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 08.12.1995 and presently working as Junior Engineer on monthly salary of ₹ 26,604/-, at the time of her transfer from HFCL Solan to another establishment i.e Warehouse 029 Mauza Kalipur, Village Motihara, Dumka, Jharkhand, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the

verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . . *OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . . *OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . . *OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS.

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Rekha Dhiman, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied

that since she did not opt either of one, his job was transferred to Village Motihara, Dumka, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this

case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Village Motihara, Dumka, Jharkhand vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to

be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the

Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Village Motihara, Dumka, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Village Motihara, Dumka, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 121 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Anjana Thakur w/o Shri Shikhar Thakur C/o Prem Sagar, Opposite NIIT, Computer Centre, Housing Board Colony Saproon, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . . *Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P., through its Factory Manager. . . *Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Anjana Thakur (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 07.11.1994 and presently working as Technician on monthly salary of ₹ 23,479/-, at the time of her transfer from HFCL Solan to another establishment i.e. Warehouse 029 Mauza Kalipur, Village Motihara, Dumka, Jharkhand, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for

restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put to strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020 had not joined her services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as

mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No.3	No
Relief	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1.

15. In order to substantiate its case, the petitioner Ms. Anjana Thakur, stepped into the witness box as (PW-1), and tendered in to evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Dumka, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing

orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers

had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen,

which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Dumka, Jharkhand vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of

following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Dumka, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Dumka, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide

order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 122 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Anjana Kumari w/o Shri Gopal Swaroop, Chail road, Kandaghat, P.O. and Tehsil Kandaghat, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Anjana Kumari (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 20.01.1994 and presently working as Sr. Technical Assistant on monthly salary of ₹ 24,375/-, at the time of her transfer from HFCL Solan to another establishment i.e HTL Ltd., 57, GST Road Guindy, Chennai, Tamil Nadu, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change

in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Anjana Kumari, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Guindy, Chennai, Tamil Nadu. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019

(P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent

company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
 - 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Guindy, Chennai, Tamil Nadu vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

"Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications

Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?"

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Guindy, Chennai, Tamil Nadu) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the

transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Guindy, Chennai, Tamil Nadu is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 123 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Reena Sharma w/o Shri Kuldeep Sharma, Sharma Niwas Near HRTC Workshop Chambaghat Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P., through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Reena Sharma (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.05.2000 and presently working as Senior Technician on monthly salary of ₹ 21,250/-, at the time of her transfer from HFCL Solan to another establishment i.e. Warehouse 029 Mauza Kalipur, Village Motihara, Dumka, Jharkhand, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the

workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray forever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is

further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

- | | |
|------------|---|
| Issue no.1 | Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith. |
|------------|---|

Issue no. 2 No

Issue No. 3 No

Relief. Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO.1

15. In order to substantiate its case, the petitioner Ms. Reena Sharma, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Dumka, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in

any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the

respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Dumka, Jharkhand vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer

submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further

admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman mala fide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Dumka, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Dumka, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 124 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Vijay Kumar s/o Shri R.L Sharma R/o Sharma Niwas Shoolini Nagar, Jaunaji Road, Solan, H.P. through Shri J. C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . . *Respondent*.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Vijay Kumar (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.04.1992 and presently working as Senior Technician Assistant on monthly salary of ₹ 26,604/-, at the time of his transfer from HFCL Solan to another establishment i.e. 19 RN Mukerjee Road, Main Building 2nd Floor, BBD Bag, Kolkata, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble

outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in

losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Vijay Kumar stepped into the witness box as (PW-1), and tendered in to evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to BBD Bag, Kolkata. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. **Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to BBD Bag, Kolkata vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the

condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred

place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (BBD Bag, Kolkata) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to BBD Bag, Kolkata is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-

(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 125 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Indu Sharma w/o Rajinder Singh Thakur, Opposite HFCL Wireline Division, Ward No.4,
Basal Road Chambaghat, Solan, H.P. Through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1,
3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic
Communication Chambaghat, Solan, H.P., through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J. C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Indu Sharma (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government *i.e.* State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union *i.e.* HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 11.09.1989 and presently working as Sr. Technical Assistant on monthly salary of ₹ 35,083/-, at the time of her transfer from HFCL Solan to another establishment *i.e.* Warehouse Sonpurwa, Railway Gate No.5,

Near Railway Station, Garhwa, Jharkhand, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and

appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .OPP.

2. Whether the application is not maintainable in the present form, as alleged? . . . *OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . . *OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No.3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Indu Sharma, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Garhwa, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the

respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory

or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these

petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Garhwa, Jharkhand vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the

respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention

here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Garhwa, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with mala fide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Garhwa, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020** is

hereby set aside and quashed. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer.**

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 126 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Rajindra Kumari w/o Shri Gulshan Ansari, Om Bhawan Shilly Road Near Sheran Wali Kothi, House No. 338/8, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .*Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P., through its Factory Manager. . .*Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Rajindra Kumari (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section

2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 29.04.1994 and presently working as Sr. Technical Assistant on monthly salary of ₹ 23,060/-, at the time of her transfer from HFCL Solan to another establishment i.e HTL Ltd., 57, GST Road Guindy, Chennai, Tamil Nadu, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no

work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP*.
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR*.
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR*.
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Rajindra Kumari, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Guindy, Chennai, Tamil Nadu. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for

not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not

in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Guindy, Chennai, Tamil Nadu vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the

eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this

Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Guindy, Chennai, Tamil Nadu) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Guindy, Chennai, Tamil Nadu is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide

the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 127 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Mahesh Kumar s/o Shri Puran Dutt r/o Village Kiari, P.O. Kiarighat, District Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .Applicant .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., Through its Factory Manager. . .Respondent. .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J. C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Mahesh Kumar (**hereinafter to**

be referred as the Petitioner) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 22.02.1994 and presently working as Technician Assistant on monthly salary of ₹ 24,729/-, at the time of his transfer from HFCL Solan to another establishment i.e. HTL Ltd., 57, GST Road, Guindy, Chennai, Tamil Nadu, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the

verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . . *OPP*.
2. Whether the application is not maintainable in the present form, as alleged? . . . *OPR*.
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . . *OPR*.
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Mahesh Kumar stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied

that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Guindy, Chennai, Tamil Nadu. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of

business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the

petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Guindy, Chennai, Tamil Nadu vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer

is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the

pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Guindy, Chennai, Tamil Nadu) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Guindy, Chennai, Tamil Nadu is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 128 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Vinod Kumar s/o Shri Sant Ram, r/o Village Anji, P.O. Barog, Tehsil & District Solan, H.P. through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . *Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P., through its Factory Manager. . *Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Vinod Kumar (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 19.11.1994 and presently working as Technical Assistant, on monthly salary of ₹ 23,333/-, at the time of his transfer from HFCL Solan to another establishment i.e Officer Commanding Signals, Project NFS, Sukna, West Bengal, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are

prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020, had not joined his services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Sukna, West Bengal.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No.3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Vinod Kumar stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Sukna, West Bengal. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019

(P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent

company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Sukna, West Bengal vide transfer order dated 24.8.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

"Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications

ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?"

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Sukna, West Bengal) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated

24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Sukna, West Bengal is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 129 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Ramesh Thakur s/o Shri K.R. Thakur, Village Ber-Khas, Chambaghat, Solan, H.P. Through Shri J. C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan H.P., Through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Ramesh Thakur (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.12.1995 and presently working as Driver Senior Grade-2 on monthly salary of ₹ 22,396/-, at the time of his transfer from HFCL Solan to another establishment i.e. Warehouse 029 Mauza Kalipur, Village Motihara, Dumka Jharkhand vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated

19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020, had not joined his services at the transferred place. However, is submitted

that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Ramesh Thakur, stepped into the witness box as (PW-1), and tendered in to evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Dumka Jharkhand. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to

work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated

04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Dumka Jharkhand vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still

pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Dumka Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Dumka Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020, is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 130 of 2020
Instituted on : 24-12-202
Decided on : 01-10-2022

Nita Mehta w/o Shri Naresh Verma, Village Kofta, Bawara Road Surya Bihar Colony, Chambaghat, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . . *Applicant*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . . *Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J. C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Nita Mehta (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.07.1994 and presently working as Technical Assistant on monthly salary of ₹ 23,750/-, at the time of her transfer from HFCL Solan to another establishment i.e Warehouse Plot No.603 Village Ruka, Near Ruck Dam, Ranchi, Jharkhand, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble

outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in

losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Nita Mehta, stepped into the witness box as (PW-1), and tendered in to evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Ranchi, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Ranchi, Jharkhand vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate

that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. More so, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an

expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Ranchi, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Ranchi, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 131 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Ishwar Dutt s/o Shri D.D Sharma, Geeta Niwas, Near Tar Factory, Saproon Solan, H.P.
through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near
District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic
Communication Chambaghat Solan H.P., through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Ishwar Dutt (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government *i.e.* State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union *i.e.* HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 13.12.1994 and presently working as Assistant Engineer, on monthly salary of ₹ 30,833/-, at the time of his transfer from HFCL Solan to another establishment *i.e.* Warehouse Safexpress Pvt. Ltd., Changsari, NH-31, Opposite Army Camp, Kamrup, Guwahati, *vide* transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner

have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020, had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Sukna, Kamrup, Guwahati.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Ishwar Dutt stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Kamrup, Guwahati. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Kamrup, Guwahati vide transfer order dated 24.8.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation

Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where

there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the

respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Kamrup, Guwahati) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with mala fide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Kamrup, Guwahati is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 132 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Madan Lal s/o Shri Jaram Singh C/o Raj Kumar Attri, House No. 454/3, Bye-Pass Road
Kather, Solan, H.P. through Shri J. C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City
Centre Plaza, (near District Courts) Solan, District Solan, H.P.

. . Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic
Communication Chambaghat, Solan H.P., through its Factory Manager.

. . Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Madan Lal (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 16.10.1991 and presently working as Senior Technician on monthly salary of ₹ 26,604/-, at the time of his transfer from HFCL Solan to another establishment i.e. Warehouse Plot No. 603, Village Ruka

Near Ruck Dam, Ranchi, Jharkhand, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and

appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .OPP.

2. Whether the application is not maintainable in the present form, as alleged? . .OPR.
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . .OPR.
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Madan Lal stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Ranchi, Jharkhand. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended

that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these

petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Ranchi, Jharkhand vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the

respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here

that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreover the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Ranchi, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with mala fide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Ranchi, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020** is

hereby set aside and quashed. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer.**

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 133 of 2020

Instituted on : 24-12-2020

Decided on : 01-10-2022

Premi Devi w/o Shri Pradeep Kumar c/o Shalender Thakur, Bhawani Niwas, Near Athena Public School Solan, H.P through Shri J. C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . *Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . *Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Premi Devi (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this

Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 03.04.1990 and presently working as Sr. Technical Assistant on monthly salary of ₹ 30,104/-, at the time of her transfer from HFCL Solan to another establishment i.e. Warehouse Plot No. 603, Village Ruka, Near Ruck Dam, Ranchi, Jharkhand, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no

work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1.

15. In order to substantiate its case, the petitioner Ms. Premi Devi, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Ranchi, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and

victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. **Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
3. **The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Ranchi, Jharkhand vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any

concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of

India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the

petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Ranchi, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Ranchi, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 134 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Ritu Kumari w/o Shri Damoder c/o Tek Bahadur, VPO Saproon, Tehsil & District Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Ritu Kumari (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government *i.e.* State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union *i.e.* HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.07.2002 and presently working as Technical Assistant on monthly salary of ₹ 15,700/-, at the time of her transfer from HFCL Solan to another establishment *i.e.* Warehouse Plot No.603 Village Ruka, Near Ruck Dam, Ranchi, Jharkhand, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no.

138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was

obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Ritu Kumari, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of

shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Ranchi, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-

1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1,**

Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Ranchi, Jharkhand vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Ranchi, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Ranchi, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-

(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 135 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Sita Ram s/o Shri Munu Ram, Village and P.O. Chhausha, Tehsil Kandaghat, Solan, H.P.
through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza (near
District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic
Communication Chambaghat Solan H.P., through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Sita Ram (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.09.1992 and presently working as Sr. Technical Assistant, on monthly salary of ₹ 26,604/-, at the time of his transfer from HFCL Solan to another establishment/site i.e. Tezpur, Officer Commanding Signals Project, NFS, Tezpur, Assam, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put to strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020, had not joined his services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to

the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP*.
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR*.
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR*.
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Sita Ram stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Tezpur, Assam. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing

orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers,

in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
- 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Tezpur, Assam vide transfer order dated 24.8.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

"Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?"

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of

following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Tezpur, Assam) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Tezpur, Assam, is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide

order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 136 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Uma Devi w/o Vinod Negi r/o c/o Shri L.R. Sharma, Village Bawara, Chambaghat, District, Solan, H.P. Through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP, Through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Uma Devi (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 26.05.1995 and presently working as Technical Assistant on monthly salary of ₹ 23,542/-, at the time of her transfer from HFCL Solan to another establishment i.e Warehouse Safexpress Pvt. Ltd., Chagsari, NH-31, Opposite Army Camp, Kamrup, Guwahati, Assam, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was lateron prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change

in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections *qua* maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Uma Devi, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Kamrup, Guwahati, Assam. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019

(P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent

company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
 - 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Kamrup, Guwahati, Assam vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

"Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications

Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?"

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word "shall" makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Kamrup, Guwahati, Assam) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order

dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Kamrup, Guwahati, Assam is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-

(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 137 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Bimla Nagta d/o Shri Rai Singh Village Jarai, P.O. Brewery, Tehsil & District Solan, H.P.
Through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near
District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic
Communication Chambaghat, Solan H.P., Through its Factory Manager. . *Respondent*.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Bimla Nagta (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 08.03.1991 and presently working as Technical Assistant on monthly salary of ₹ 24,170/-, at the time of her transfer from HFCL Solan to another establishment i.e. Warehouse Sonpurwa, Railway Gate No.5, Near Railway Station, Garhwa, Jharkhand, *vide* transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers were sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the

workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred *vide* transfer order dated 04.09.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is

further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme *w.e.f.* 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident *vide* Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Bimla Nagta, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice *vide* reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Garhwa, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that *vide* GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered.

He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Delhi Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.**

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-

A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal--cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.
3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-

cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Garhwa, Jharkhand *vide* transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication *vide* notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile

the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who *vide* notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the

transfer order dated 04.09.2020 were stayed by this Court *vide* order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal *vide* order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court *vide* order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court *vide* order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal *vide* order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Garhwa, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Garhwa, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 138 of 2020

Instituted on : 24-12-2020

Decided on : 01-10-2022

Sita Devi w/o Man Singh c/o Chuni lal, Shiv Shakti Bhawan, Near Shiv Mandir Brewery, Solan, H.P. Through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP, Through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Sita Devi (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government *i.e.* State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union *i.e.* HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 15.12.1993 and presently working as Sr. Technical Assistant on monthly salary of ₹ 24,833/-, at the time of her transfer from HFCL Solan to another establishment *i.e.* Warehouse Plot No. 603, Village Ruka, Near Ruck Dam, Ranchi, Jharkhand, *vide* transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been

transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections *qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court* with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred *vide* transfer order dated 24.08.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident *vide* Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No.3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Sita Devi, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice *vide* reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Ranchi, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. She admitted that Chambaghat unit is paying GST. He denied that *vide* GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice

without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union**

(LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Ranchi, Jharkhand vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be

subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021

was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court *vide* order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal *vide* order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Ranchi, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Ranchi, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court *vide* order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 139 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Ranjeet Singh s/o Shri Ram Sawrup, Opposite HFCL, Wireline Division, Ward No.4, Basal Road, Chambaghat Solan, H.P. Through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . *Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan H.P., Through its Factory Manager. . *Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J. C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Ranjeet Singh (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 13.12.1993 and presently working as Junior Engineer on monthly salary of ₹ 25,479/-, at the time of his transfer from HFCL Solan to another establishment i.e. Warehouse Safexpress Pvt. Ltd. Changsari, NH 31, Opposite Army Camp, Kamrup, Guwahati, Assam, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was lateron prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner

have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put to strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020, had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e Kamrup, Guwahati, Assam.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue No. 2	No.
Issue No.3	No.
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Ranjeet Singh stepped into the witness box as (PW-1), and tendered in to evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made there to in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice *vide* reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Kamrup, Guwahati, Assam. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that *vide* GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal--cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Kamrup, Guwahati, Assam *vide* transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who *vide* notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from

the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman mala fide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition

which was disposed off by the Hon'ble High Court *vide* order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal *vide* order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Kamrup, Guwahati, Assam) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Kamrup, Guwahati, Assam is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat, Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court *vide* order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 140 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Sunil Kumar s/o Shri Dharam Chand c/o Shri Vijay Sharma, Karol Vihar Colony, Chambaghat, Solan, H.P. Through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan H.P., Through its Factory Manager. . .Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Sunil Kumar (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 01.08.2005 and presently working as Senior Operator on monthly salary of ₹ 13,380/-, at the time of his transfer from HFCL Solan to another establishment i.e. Warehouse 029 Mauza Kalipur, Village Motihara Dumka Jharkhand, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred on 18.07.2020, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble

outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers were sent there prior to his transfer. Therefore, the transfer orders were issued with mala fide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections *qua* maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020, for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put to strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in

losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020, had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Dumka, Jharkhand.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident *vide* Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue no. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Sunil Kumar stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A), wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial losses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Jharkhand. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Dumka Jharkhand vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who *vide* notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be

subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition

which was disposed off by the Hon'ble High Court *vide* order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal *vide* order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Dumka Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Dumka jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court *vide* order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 141 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Babu Ram s/o Shri Rattan Singh, Village Tikkri, P.O. Shargaon, Tehsil Rajgarh, District Sirmaur, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . . *Respondent*.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Babu Ram (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 11.10.1995 and presently working as Senior Technician on monthly salary of ₹ 22,667/-, at the time of his transfer from HFCL Solan to another establishment i.e Warehouse Safexpress, Pvt. Ltd., Changsari, NH-31, Opposite Army Camp, Kamrup Guwahati, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to

assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in

losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Babu Ram stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Kamrup Guwahati. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that

10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own**

Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12 61 workers, in the year 2013-14, 4 workers, in the year 2014-15 6 workers and in the year 2020-21 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
 - 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Kamrup Guwahati vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before

the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority.

The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition

which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore ibid .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Kamrup Guwahati) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Kamrup Guwahati is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 142 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Amriti Devi w/o Om Prakash Sharma r/o Sharma Niwas, Village Upper Kuthar, House No. 313, P.O Basal, Tehsil & District, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .*Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . .*Respondent*.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Amriti Devi (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 17.08.1989 and presently working as Technical Assistant on monthly salary of ₹ 29,167/-, at the time of her transfer from HFCL Solan to another establishment i.e Warehouse Safexpress Pvt. Ltd., Chagsari, NH-31, Opposite Army Camp, Kamrup, Guwahati, Assam, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was lateron prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained

to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in

losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue No. 2	No.
Issue No. 3	No.
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Amriti Devi, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Kamrup, Guwahati, Assam. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Kamrup, Guwahati, Assam vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be

subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021

was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Kamrup, Guwahati, Assam) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Kamrup, Guwahati, Assam is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 143 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Sharda Thakur d/o Shri Roop Singh r/o Neel Niwas, Pawan Vihar Near Boy's Hostel, Rajgarh Road Solan, H.P through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . Applicant.

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . Respondent.

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Sharda Thakur (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 22.02.1994 and presently working as Sr. Technical Assistant on monthly salary of ₹ 24,958/-, at the time of her transfer from HFCL Solan to another establishment i.e Warehouse Sonpurwa, Railway Gate No.5, Near Railway Station, Garhwa, Jharkhand, vide transfer order dated 04.09.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to

assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 04.09.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 04.09.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 04.09.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in

losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 04.09.2020 had not joined her services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 04.09.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 04.09.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 04.09.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No.3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Sharda Thakur, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Garhwa, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 04.09.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Garhwa, Jharkhand vide transfer order dated 04.09.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 04.09.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be

subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 04.09.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 04.09.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 04.09.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 04.09.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 04.09.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. More so the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 04.09.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 04.09.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition

which was disposed off by the Hon'ble High Court *vide* order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal *vide* order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 04.09.2020 transferring the petitioner to a distinct place (Garhwa, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 04.09.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Garhwa, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court *vide* order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 04.09.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 04.09.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 144 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Punam Chauhan d/o Shri Dhani Ram, Astha Lodge, Shanti Vihar, Bye-Pass Kather, Solan, H.P. through Shri J.C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., Through its Factory Manager. . . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Punam Chauhan (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 04.10.1993 and presently working as Senior Technician Assistant on monthly salary of ₹ 24,833/-, at the time of her transfer from HFCL Solan to another establishment i.e. HTL Ltd., 57, GST Road Guindy, Chennai, Tamil Nadu, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble

outside the factory gate to hold their peaceful meetings. The services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers were sent there prior to her transfer. Therefore, the transfer orders were issued with mala fide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approach to the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put to strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in

losses since more than a decade due to no direct demand for the manufacturing of the telecom equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under:

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Punam Chauhan stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Guindy, Chennai, Tamil Nadu. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Guindy, Chennai, Tamil Nadu vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from

the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition

which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Guindy, Chennai, Tamil Nadu) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Guindy, Chennai, Tamil Nadu is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 145 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Usha Thakur w/o Shri Sanjeev Kumar, Village Kathog, P.O. Salograh, Tehsil & District, Solan, H.P through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza (near District Courts) Solan, District Solan, H.P. . *Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . *Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Usha Thakur (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 22.12.1993 and presently working as Sr. Technical Assistant on monthly salary of ₹ 28,708/-, at the time of her transfer from HFCL Solan to another establishment i.e Warehouse Sonpurwa, Railway Gate No.5, Near Railway Station, Garhwa, Jharkhand, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been

transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Usha Thakur, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Garhwa, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Garhwa, Jharkhand vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by

initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be

subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman mala fide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021

was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Garhwa, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Garhwa, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer *res-integra*, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the *lis* finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 146 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Sikandar Kumar s/o Shri Mahasa Ram, VPO Sagoor, Tehsil Baijnath, District Kangra, H.P. through Shri J. C. Bhardwaj, President H.P. AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . .*Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . .*Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Shri Sikandar Kumar (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 14.06.1994 and he was transferred from HFCL Solan to another establishment i.e. Warehouse Sonpurwa, Railway Gate No.5, Near Railway Station, Garhwa, Jharkhand, vide transfer order dated 28.07.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The

services of the petitioner have been transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to his transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 28.07.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 28.07.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 28.07.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 28.07.2020 had not joined his services at the transferred place. However, is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 28.07.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 28.07.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 28.07.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Shri Sikandar Kumar stepped into the witness box as (PW-1), and tendered into evidence his sworn in affidavit (PW-1/A) wherein he has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, he admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. He feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. He denied that the employees at Chambaghat Unit had either no work or negligible work. He denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. He denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. He denied that since he did not opt either of one, his job was transferred to Garhwa, Jharkhand. He admitted that his appointment letter bears the stipulation that his services can be transferred anywhere in India. He further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. He denied that at the time of shifting of the machinery, they interfered in its shifting. He admitted to have issued show cause notice and chargesheet for not joining at the transferred place. He also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. He also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

"Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.

2. **Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 28.07.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k)“industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Garhwa, Jharkhand vide transfer order dated 28.07.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through

the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan H.P. for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 28.07.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority.

The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 28.07.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman mala fide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 28.07.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 28.07.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 28.07.2020 and resume his work and discharge his duties at the transferred place forthwith and since the petitioner has failed to report for his duties at the transferred place a chargesheet was issued to him. It is particular to mention here that the transfer order dated 28.07.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 28.07.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 28.07.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore *ibid*.

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that his transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 28.07.2020 transferring the petitioner to a distinct place (Garhwa, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 28.07.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Garhwa, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as he was working prior to his transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 28.07.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 28.07.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where he was working prior to his transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 147 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022.

Meena Thakur w/o Shri Ramji Das Thakur, House No. 82/01, Block No. 176, Village Bawra, Chambaghat, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . *Applicant* .

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . *Respondent* .

Complaint under section 33-A of the Industrial Disputes Act, 1947

For the Applicant : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Meena Thakur (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan HP (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 16.08.1989 and presently working as Sr. Technical Assistant on monthly salary of ` 33,438/-, at the time of her transfer from HFCL Solan to another establishment i.e. Warehouse 029 Mauza kalipur, Village Motihara, Dumka, Jharkhand, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been

transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? . . .*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief.	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Meena Thakur, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice *vide* reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Village Motihara, Dumka, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e. Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that *vide* GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J. C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union**

(LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlabbu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**
 - 3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of."**

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Village Motihara, Dumka, Jharkhand vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan HP for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. Moreso, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal vide order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition which was disposed off by the Hon'ble High Court *vide* order dated 07.07.2021, mentioned hereinbefore *ibid* .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still

pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Village Motihara, Dumka, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Village Motihara, Dumka, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Application Number : 148 of 2020
Instituted on : 24-12-2020
Decided on : 01-10-2022

Krishna Devi w/o Shri Rajinder Singh, R/o Village Bar Jubbar, Chambaghat Tehsil & District, Solan, H.P. through Shri J.C. Bhardwaj, President HP AITUC HQ D-1, 3rd Floor City Centre Plaza, (near District Courts) Solan, District Solan, H.P. . *Applicant.*

VERSUS

HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat, Solan H.P., through its Factory Manager. . *Respondent.*

Complaint under section 33-A of the Industrial Disputes Act, 1947.

For the Applicant : Shri J.C Bhardwaj, AR

For the Respondent : Shri Vikas Chauhan, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (**hereinafter to be referred as the Act**), against the change of service conditions during the pendency of reference petition no. 138 of 2019, preferred by Ms. Krishna Devi (**hereinafter to be referred as the Petitioner**) against HFCL Limited (Formerly known as Himachal Futuristic Communication Ltd.) Electronic Communication Chambaghat Solan, H.P. (**hereinafter to be referred as the Respondent**).

2. Material facts necessary for the disposal of the present petition are thus that the appropriate government i.e. State of Himachal Pradesh has been pleased to refer the dispute raised by the petitioner union i.e. HFCL Group Mazdoor Sangh (**in short petitioner union**), under section 2-K of the Act, which is registered as reference no. 138 of 2019 for adjudication before this Tribunal. The petitioner union is duly registered under the Trade Union Act, 1926, as such, the union is sole representative of the workers employed with the respondent company.

3. It is again averred that the petitioner has joined the respondent company on 02.05.1995 and presently working as Technical Assistant on monthly salary of ₹ 23,729/-, at the time of her transfer from HFCL Solan to another establishment i.e Warehouse Sonpurwa, Railway Gate No.5, Near Railway Station, Garhwa, Jharkhand, vide transfer order dated 24.08.2020. The petitioner along-with other workers were transferred, during the peak of Pandemic Covid-19 and during the pendency of reference petition no. 138 of 2019. It is averred that the petitioner and other workers were victimized by transferring them to other establishments in violation of the Certified Standing Orders, as applicable to the respondent company. Before that, there was illegal lock-out for 63 workers during the pendency of the demand notice dated 29.03.2019, which was later on prohibited by the Labour Commissioner on 28.09.2019. The management forcibly took possession of the office of the workmen union and sealed it arbitrarily and did not allow to enter any office bearer and member of the union. The workers were threatened, assaulted and pressurized to enter into a settlement as per the desired terms of the management. The workers were restrained to assemble outside the factory gate to hold their peaceful meetings. The services of the petitioner have been

transferred not due to exigency of service but in violation of Certified Standing Orders only to crush the genuine rights of the workman and has created an atmosphere of terror and had transferred as many as 52 workmen. Moreover, there is no work in the factory where the petitioner was transferred as no other workers was sent there prior to her transfer. Therefore, the transfer orders were issued with malafide intention to harass and break down the unity of the workers and to defeat the terms of reference No. 138 of 2019. During the pendency of demand charter dated 19.03.2019, the transfer order dated 24.08.2020 were issued to deny the genuine demands of the workers. It is only when the petitioner has refused to accept the settlement according to the desired terms of the respondent company. The petitioner was illegally stopped to enter the factory, the respondent company clamped illegal lock-out without seeking prior permission from the competent authority. The action of the respondent company to change the service conditions of the petitioner during the pendency of the industrial dispute before this Tribunal and as such the action of the respondent is improper, unlawful and unjustified and the same ought to be declared null and void and inoperative. It is also averred that during the pendency of reference no. 138 of 2019, the order of transfer dated 24.08.2020 without obtaining any prior permission of the competent authority, is amounted to change in service conditions. The transfer order is ultra-virus and as such the change in service condition are prohibited without obtaining prior permission, during the pendency of the industrial dispute, which is violative of section 33 (1) (a) of the Act, which required to be quashed and set aside.

4. The following prayer clause has been appended in the footnote of the application:

“It is therefore humbly prayed that your honour may kindly be pleased to set aside the transfer order of dated 24.08.2020 issued against the petitioner and further pray for restoration of the service of the petitioner at HFCL Ltd., Chambaghat Solan with the incidental service benefits with cost throughout from the date of illegal transfer orders, the petitioner shall pray for ever.”

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections qua maintainability, reference petition no. 138 of 2019, is not sustainable, no approached the Court with clean hands, territorial jurisdiction, reference petition no. 138 of 2019, was under challenge, the emoluments and other service benefits enjoyed by the petitioner and there is no violation of any pendency before the Tribunal.

6. On merits, it is submitted that the respondent company engaged in the work of manufacturing the telecom equipment's at its Solan unit, however, from last 10 years there is no work order or demand left with the company from the market, resultantly the company is reeling into huge losses. The workforce enrolled in the unit had remained idle due to lack of work orders, hence, the respondent started shifting its workforce to its other units/project sites and the petitioner was one of them. The terms and conditions of the services of the petitioner were governed by the appointment letter as well as the Certified Standing Orders, Executive conduct, discipline and appeal rules of the respondent as applicable in the respondent company. The petitioner and other workers have already been issued separate chargesheet dated 30.12.2020 for not reporting at the transferred place.

7. Again, it is submitted that the reference petition No. 138 of 2019 pending adjudication before this Tribunal has no bearing/relation to the impugned transfer order. The petitioner be put strict proof to the same. The transfer being the incidence of service rather than the change of service condition. The respondent company never resorted to any unfair labour practice rather the workmen with its illegal demands had time and again taken the management for a ride with their ulterior motive knowing fully well that the respondent unit in Chambaghat, Solan is running in losses since more than a decade due to no direct demand for the manufacturing of the telecom

equipment's/products from the market. The action of respondent management in no manner is illegal or unjust in the given circumstances. The non-joining of the petitioner at transferred place would result into gross-misconduct.

8. It is an admitted position on record that the petitioner being transferred vide transfer order dated 24.08.2020 had not joined her services at the transferred place. However, it is submitted that the transfer of the petitioner and other co-worker was due to non-availability of work. It is further submitted that the respondent company had tried its level best to accommodate the petitioner at every available place instead of terminating his services. The respondent also rolled out VRS Scheme w.e.f. 20.02.2020 for its workers/employees, who found it difficult to shift from the Solan Unit to other Unit/Project Sites for a peaceful separation. It is submitted that the number of workers have opted for the VRS Scheme. It is denied that the transfer order dated 24.08.2020 of the petitioner were not due to exigency of work but the transfer was ordered to terrorize the workman and to weaken the union so that the settlement could be signed as per the desired terms of the management. The transfer is a service condition/incidence of service applicable to the workmen of the respondent. It is denied that the respondent has no other branch anywhere in the Country.

9. Further, it is again submitted that the respondent company has its registered office at Solan under the Governing law and its Head Office is duly functioning from New Delhi and all administrative decisions/ orders are being taken care of from the Head Office. The issue in hand was duly taken care of as per procedure laid and in no manner has any relation to the pandemic COVID-19 and the respondent at no point of time changed the service conditions as applicable to the petitioner during the pendency of any valid/legal proceedings in the Court. The transfer orders have been issued in the utmost good faith and bonafide intentions, for the reasons stated therein, as mentioned earlier. It is, therefore, most humbly prayed that the complaint/application of the applicant/workman be dismissed with heavy costs in the interest of justice and fair play.

10. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those averments as pleaded in the petition thereto in the verbatim. It is submitted that the respondent is bound to save with express permission in writing of the competent authority before which the proceedings are pending but no such permission was obtained. The reference petition no. 138 of 2019 and 141 of 2019 are pending before this Tribunal. The transfer order is not issued in good faith and bonafidely but under the garb of shifting the factory from its present location i.e. Chambaghat to new place of shifting i.e. Hyderabad.

11. On elucidating the pleading of parties, the following issues were struck down for its final determination by this Court, as evident vide Court order dated 24.11.2021 as under.

1. Whether the respondent has changed the conditions of the services of the petitioner by issuing transfer order dated 24.08.2020, during the pendency of the reference no. 138 of 2019 in violation of the provisions of section 33(1) of the Industrial Disputes Act, as alleged? ..*OPP.*
2. Whether the application is not maintainable in the present form, as alleged? . .*OPR.*
3. Whether this Court has no jurisdiction to try and decide the present petition, as alleged? . .*OPR.*
4. Relief

12. Henceforth, parties to the dispute were afforded opportunity to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

13. I have heard the learned counsel and AR for the parties and have also gone through the record of the case carefully.

14. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes. Transfer order dated 24.08.2020 are set aside and quashed forthwith.
Issue No. 2	No
Issue No. 3	No
Relief	Application allowed, as per operative part of order/award.

REASONS FOR FINDINGS

ISSUE NO. 1

15. In order to substantiate its case, the petitioner Ms. Krishna Devi, stepped into the witness box as (PW-1), and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made thereto in the petition.

16. In cross-examination, she admitted that there was no issue pertaining to the transfer in the demand notice vide reference no. 138 of 2019 pending before this Court. She feigned ignorance that the Chambaghat unit of the respondent was running in financial loses for the last 15 years. She denied that the employees at Chambaghat Unit had either no work or negligible work. She denied that the respondent company has offered its employees the place of choice in order to continue the service of the workers. She denied that the company has launched VRS Scheme with the notice of shifting to facilitate the workers who were unwilling to relocate at new place of posting. She denied that since she did not opt either of one, his job was transferred to Garhwa, Jharkhand. She admitted that her appointment letter bears the stipulation that her services can be transferred anywhere in India. She further denied that the plant and machinery of the Chambaghat Unit was to be transferred to new factory at Hyderabad. She denied that at the time of shifting of the machinery, they interfered in its shifting. She admitted to have issued show cause notice and chargesheet for not joining at the transferred place. She also denied that at present there is no worker working the company and only managerial/skeleton staff are working.

17. On the other hand, the respondent examined one Shri G.S. Rana, Manager HR and Admin. as (RW-1), who tendered into evidence his sworn-in affidavit (RW-1/A), wherein he reiterated almost all the averments as stated in the reply.

18. In cross-examination, he admitted that all the workers had visited the respondent company to join their duties on 28.10.2021 and 29.10.2021. He denied that the unit of the respondent was not shifted to the Hyderabad and the company is still working. He admitted that the licence of the Chambaghat unit had not been surrendered. He admitted that the workers were transferred to different parts of the Country i.e Chennai, Kolkata, Bangalore, Ranchi, Punjab, Goa, Assam etc. He denied that the respondent has no units at these places and the petitioners were transferred on victimization. She also denied that there is no project sites of the company and the petitioner were subjected to harassment under the garb of transfer. He admitted that Chambaghat unit is paying GST. He denied that vide GR only the scrap and out lived machinery were sent. He admitted that general demand notice was issued by the workers on 29.03.2019. He denied that

office bearers of the workers union were dismissed during the pendency of the demand notice without seeking approval/permission from the Court. He admitted that 63 workers of the respondent company were lock-out in attending their job on 27.07.2019. He further admitted that 10 workers were transferred on 27.07.2019. He also admitted that no FIR was lodged regarding the obstruction/hindrances created by the workers. He denied that the workers were not allowed to work after the prohibition order issued by the Labour Commissioner. He admitted that no permission was obtained from Excise Department, Labour Department and Industries Department for shifting its Chambaghat Unit to Hyderabad. He admitted that lease deed was not surrendered. He denied that in the previous settlement the workers were given 45% hike in the salary. He also denied that the company is not abiding to the orders of the Court.

19. In documentary proof, the petitioner has relied upon demand notice dated 29.03.2019 (P-1), notice of this Court (P-2), letter dated 25.05.2019 (P-3), letter dated 11.07.2019 (P-4), notice to the parties by this Court (P-5), lockout notice by the management (P-6), list of workmen (P-7), show cause notice dated 03.09.2019 (P-8), prohibition of lock-out (P-9), letter dated 30.09.2019 (P-10), letter dated 01.10.2019 (P-11), letter dated 04.10.2019 (P-12), letter dated 05.10.2019 (P-13), letter dated 07.10.2019 (P-14), letter dated 09.10.2019 (P-15), undertaking by the parties (P-16), notification (P-17), notice (P-18), letter dated 11.07.2020 (P-19), VRS Scheme (P-20), settlement (P-21), chargesheet (P-22), transfer order (P-23), and copy of order Mark PX-1, letter dated 04.07.2020 Mark PX-2, letter dated 08.07.2020 Mark PX-3, representation Mark PX-4, rapat dated 13.07.2020 Mark PX-5, rapat dated 16.07.2020 Mark PX-6 and notice Mark PX-7.

20. Contrary to this, the respondent has relied upon notice (RW-1/B), VRS dated 20.2.2020 (RW-1/C), chargesheet (RW-1/D), appointment letter (RW-1/E), certified standing orders (RW-1/F), transfer order (RW-1/G), resolution dated 30.06.2009 (RW-1/H), resolution dated 09.02.2018 (RW-1/J), resolution dated 3.5.2018 (RW-1/K), resolution dated 17.08.2020 (RW-1/L), SPA dated 25.07.2020 (RW-1/M), certificate of incorporation (RW-1/N), commencement of business dated 13.07.1987 (RW-1/O), certificate of registration (RW-1/P), memorandum of association (RW-1/Q), GR (RW-1/R-1) to (RW-1/R-6), EPF certificate dated 09.09.2021 (RW-1/S), shareholding certificate (RW-1/T), annual return of HTL (RW-1/U) and profit and loss statement (RW-1/V).

21. This is the entire ocular as well as documentary evidence led from the side of the parties.

22. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the demand notice under section 2-K of the Act which was referred to this Tribunal and registered as reference petition no. 138 of 2019, the respondent resorted to unfair labour practice and victimization of the workers by suspending the office bearers of the union. The respondent company clamped illegal lock-out for 63 workers which was later on prohibited by the Labour Commissioner. The transfer orders are illegal and non-est in the eyes of law which has been issued in violation of Certified Standing Orders and salient provisions of the Act. He further contended that by way of transfer, the services of the petitioner cannot be ordered to be the employ of other establishment. Moreover, the respondent is a separate entity and they do not have any other factory or establishment or working place within the Himachal Pradesh than what to talk of the transferred place of the petitioner which does not belongs to the respondent establishment. By ordering the transfer of the petitioner to a far place, there is a change in the service condition of the petitioner. There was no consultation of the workers union before launching VRS which of prohibited under section 12 (3) of the Act. The transfer of the petitioner to a distinct place without any justifiable reason during the pendency of the dispute is illegal and unjustified. He prayed for quashing the transfer orders. In support of his contention he has relied upon the Judgments of Hon'ble Apex Court in case titled as **Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi (Civil Appeal**

Nos. 5829 of 2021, Management of Hotel Imperial, New Dehli Vs. Hotel Workers Union (LAWS (SC) 1959 536, LIC of India Vs. Ram Pal Singh 2010 LLR 494, Oswal Agro Furane Ltd., Vs. Oswal Agro Furane Workers Union 2005 STPL 3804 SC and the Order of our own Hon'ble High Court passed in Civil Writ Petition No. 4970 of 2021 titled as M/s Wipro Enterprises Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court and another.

23. Per contra, Shri Vikas Chauhan, Learned Counsel appearing for the respondent strenuously argued that the contention raised from the side of the petitioner is relating to section 9-A and 33 of the Act, which is cease to exists in the case. The respondent management had already issued the notice of shifting dated 20.02.2020 and the reference no. 138 of 2019 is not in any manner related to the demand notice where the transfer is not an issue. It is submitted that since the respondent company is running into huge losses, therefore, there is no worth demand/work order left with the respondent company. Moreso, the transfer has been ordered in the wake of the appointment letter and certified standing orders as applicable to the respondent company. The HTL, is one of the sister concern of the respondent company to which the respondent is having 74% shares in the company. Similarly, the various project sites are also part and parcel of the respondent company.

24. Ld. Counsel for the respondent also contended that there were near about 150 workforce prior to issuance of the notice of shifting out of which 66 workers opted for VRS, 40 workers had joined at new place of posting and it is only 43 workers who neither opted for VRS nor joined at new place of posting. The VRS is not new concept as in the year 2011-12, 61 workers, in the year 2013-14, 4 workers, in the year 2014-15, 6 workers and in the year 2020-21, 66 workers had opted for VRS. The respondent company instead of retrenching the services of the petitioner had acted in good faith to protect the job of the workers by transferring to other work place. There is no violation of section 33-A of the Act. It is therefore prayed that the application filed by the petitioner may kindly be dismissed. The Ld. Counsel for the respondent has also relied upon case law i.e. **Godrej and Boyce Manufacturing Co. Ltd. Vs. Rameshwar P Gawade 2021 LLR-1, Civil Appeal No. 5897 of 2021 titled as Sri Doralraj Spintex Vs. R Chittlababu and Ors., Civil Appeal No. 5358 of 2002 titled as Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi.**

25. Written submissions on behalf of respective counsel representing the parties, has also been placed on record.

26. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

27. Before, proceeding further, it is pertinent to mention here that the Hon'ble High Court of Himachal Pradesh while deciding CWP Nos. 6501 of 2021, has ordered as under:

- "Having heard learned counsel for the parties for a considerable time, we are of the considered view that no purpose would be served in adjudicating these petitions which are directed against an order which is only interlocutory. Rather directions need to be issued for expeditious disposal of the lis pending before the Industrial Tribunal-cum-Labour Court, Shimla.**
- 2. Accordingly, in the given facts and circumstances of the case, we deem it proper to dispose of all these petitions by directing the Presiding Officer Industrial Tribunal-cum-Labour Court, Judicial Court Complex Chakkar, Shimla to decide the lis finally as expeditious as possible and in any event on or before 30.9.2022. Ordered accordingly.**

3. The parties to appear before learned Labour Court on 11.7.2022. The pending application(s), if any, are also disposed of.”

28. Thus, from the careful examination of the entire case record, the case of the petitioner is manifestly to the fact that the respondent management had issued the transfer orders dated 24.08.2020 (P-23 or RW-1/G) during the pendency of the industrial dispute, raised by way of demand notice dated 29.3.2019 (P-1), till the matter was referred to this Court by the appropriate government i.e. the Labour Commissioner who has received the failure report from the Labour-cum-Conciliation Officer, Solan. The action on the part of the respondent management is in violation of section 9-A and 33 of the Act. On the other hand, the case set up from the side of the respondent is that the transfers were done in accordance with the condition of service as per the terms and conditions accepted by the workers at the time of joining their duties as mentioned in the appointment letter as well as in consonance with the guidelines reduced into writing in Certified Standing Orders as applicable to the respondent company.

29. At the very inception, the first and foremost point which comes to the fore for its ultimate determination is whether there was any pendency of litigation or industrial dispute between the parties as alleged.

30. Before, proceeding further, I deem it appropriate to reproduce the provisions of section 2k of the act which reads as under:

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

31. On plain reading of the aforesaid provision of law, where there arises any sort of dispute or difference between the employer and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour or any person said to be an industrial dispute. There are certain undisputed facts which has arisen before me in this case. There is no denial to the fact that the petitioner is one of the member of workers union and is representing the grouse of all its workers, whose recognition by the respondent management is not in dispute. There is also no denial to the fact that all the workers, who have raised the demand charter dated 29.03.2019 were working with the respondent management at its Chambaghat Unit. There is again no denial to the fact that to the said demand notice the conciliation proceedings were initiated by the Labour Officer. There is again no denial to the fact that the petitioner was ordered to be transferred from Chambaghat unit to Garhwa, Jharkhand vide transfer order dated 24.08.2020. There is again no denial to the fact that neither any permission or approval was obtained from any concerned authority nor any sort of notice was issued to the petitioner and other workers before ordering the change in the service conditions of the services of the petitioner by issuing the transfer orders. There is again no denial to the fact that some of the workers those who were engaged by the respondent management at Chambaghat Unit, had opted for Voluntary Retirement Scheme from the service by giving an option for Voluntary Retirement Scheme.

32. So far as concerning the pendency of litigation between the parties, it is admittedly proved on record that the petitioner union raised demand notice dated 29.03.2019 (P-1), a copy of which has also been duly supplied to the respondent management addressed to the Labour-cum-Conciliation Officer raising thereby as many as sixteen demands, the demand notice meant under section 2k of the Act, whereby the conversation held between the parties could not be materialized. Admittedly, to the said demand notice dated 29.03.2019 (P-1), the Labour-cum-Conciliation Officer had issued notice of appearance to the respondent management and started process by initiating the conciliation proceedings. By raising the demand notice, which has clearly demonstrate

that there was pendency of dispute between the parties. I had an occasion to analyze and go through the entire case record, clearly postulated regarding the pendency of conciliation proceedings before the Labour-cum-Conciliation Officer, till sending of reference to this Court for adjudication vide notification dated 17.09.2019.

33. Thus, with regard to the pendency of litigation, it is again manifestly clear from the fact that the Labour-cum-Conciliation Officer after receiving the demand notice, issued notice of appearance to the respondent and after hearing both the parties had tried his level best to reconcile the matter. On the failure of conciliation proceedings, the Labour-cum-Conciliation Officer submitted his failure report to the Labour Commissioner, who vide notification No. 11-2/93 (Lab.) ID/2019-Solan dated 17.09.2019, referred the said matter to this Court for legal adjudication, which is still pending for final disposal on the files of this Court, which reads as under:

“Whether the 16 points demand charter NO. HFCLGMS/GS/1917, dated 29.03.2019 (copy enclosed) raised by the General Secretary, Himachal Futuristic Communications Ltd., Group Mazdoor Sangh (Regd. No. 747) Electronics Complex, Chambaghat Solan, Tehsil and District Solan, HP before the Factory Manager M/s Himachal Futuristic Communications Ltd., Electronic Complex Chambaghat Solan, Tehsil & District Solan, H.P. for fulfilling is proper and justified? If yes, what relief in terms of above demand notice the aggrieved workmen are entitled to from the above management?”

34. To be more precise in its entirety, this Court/Tribunal arrived at an inescapable conclusion that there was a pendency of dispute between the parties at the time of issuance of transfer order dated 24.08.2020 which is satisfactorily established on record.

35. Now, coming to the question raised from the side of the Learned Counsel for the respondent that it is merely an adjustment order and not transfer orders. He argued that the transfer is an incidence of service and not amounted to the change in condition of service. The petitioner belongs to a Private establishment and not a Government Sector. No doubt, the transfer is always to be understood and construed as an incidence of service, but, the accepted principle is that it is also one of the implied condition of service. However, such transfer is to an incidence of service is to be made only in case on administrative exigencies. Such an administrative exigency do not arise in the eventuality of such a bulk transfer, therefore, the transfer of petitioner with other co-workers in the guise of administrative exigency in the different parts of the country, sans merits. Normally, the transfer order should not be interfered with except where the transfer has been made is indicative of having been issued in a most clandestine and malafide manner. Simple, on the score, that the petitioner and other co-workers, transferred from Chambaghat Unit to distinct and distant places of India, does not mean that it is not a transfer. Had it been so, then what would have prevented the respondent management to issue adjustment orders instead of issuing the transfer letters with the title of transfer order.

36. Moreso, in order to determine whether it is a case of transfer or adjustment? The Court/Tribunal is to see that whether there was any change in the condition of service as provided under section 33 of the Act? Admittedly, the condition of service, had to be remained unchanged under the certain circumstances during the pendency of the proceedings, no employer, in regard to any matter incidental or connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them. Similarly, during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, alter, in regard to any matter not connected with the dispute, the condition of service and for any misconduct not connected with the dispute. Such change shall be subject to an exception that it can be made only after obtaining the prior permission in writing from

the concerned or appropriate authority with the express permission in writing from the authority. The provisions of sections 9-A, 33 and 33-A makes it evidently clear on record that the use of an expression of word “shall” makes it mandatory on the part of the authority to comply with the provisions of law. Though, it is not the sweet will or the discretion of the concerned authority but a mandate or obligation on their part to comply the provisions of law in its true letter and spirit.

37. Verily, the entire case put forth by the petitioner has been halfheartedly admitted from the mouth of the respondent witness (RW-1). In cross-examination, he has duly admitted that the transfer order dated 24.08.2020 were stayed by this Court vide order dated 18.09.2021. He further admitted that all the workers had visited the respondent company to resume their work/duties on 28.10.2021 and 29.10.2021. He admitted that the Chambaghat Unit is a registered office of the respondent. He admitted that the workers were working in production unit of the respondent at Chambaghat. He also admitted that 63 workers of respondent company were lock-out in attending their job on 27.07.2019.

38. As provided in Fourth & Fifth Schedule, in case of contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force, withdrawal of any customary concession or privilege or change in usage, introduction of new rules of discipline or alteration of existing rules, except in so far as they are provided in standing orders as mention in clause 2, 8 and 9 and the Fifth Schedule, clause 7 provides that to transfer a workman malafide from one place to another, under the guise of following management policy would definitely covered within the meaning and scope of unfair labour practice for changing the condition of service, after obtaining the mandatory requirement of prior permission from the appropriate authority and a mandatory notice is required for changing the service of condition during the pendency of an industrial dispute.

39. Therefore, the transfer order dated 24.08.2020 issued by the respondent management transferring the petitioner along-with other co-workers to different places of the Country during the pendency of the dispute between the parties is in clear cut violation of section 9-A and 33 of the Act. The respondent management did not either take into consideration the various provisions of statute by issuing the transfer order dated 24.08.2020 on the prior permission of the concerned or appropriate authority during the pendency of reference petition no. 138 of 2019 from this Court/Tribunal, which is illegal in the eyes of law. More so, the reference no. 11-2/93 (Lab.) ID/2019/Solan/HFCL dated 17.09.2019 received from the appropriate government is still pending on the files of this Tribunal, which is pending consideration for its final disposal.

40. However, in order to countenance the contention of the petitioner, the only grouse raised from the side of the respondent is that they had been issuing notice of shifting to the petitioner workman to comply with the transfer order dated 24.08.2020 and resume her work and discharge her duties at the transferred place forthwith and since the petitioner has failed to report for her duties at the transferred place a chargesheet was issued to her. It is particular to mention here that the transfer order dated 24.08.2020 has been challenged by way of filing the present petition before this Court and this Court/Tribunal *vide* order dated 18.09.2021 has stayed the transfer of the petitioner till the disposal of the main petition. Moreso the Labour-cum-Conciliation Officer had also transmitted the failure report to the Labour Commissioner and the matter was referred under reference to this Tribunal for its adjudication which is still pending on the files of this Court/Tribunal. When the transfer orders dated 24.08.2020, has been put under challenge, which was stayed by this Tribunal, as well as the receipt of notification dated 17.09.2019, I failed to understand that what is the genuineness, validity and authenticity to such actions taken by the respondent management asking the petitioner to resume his work immediately at the transferred place. It is particular to mention that this Court vide order dated 18.09.2021, stayed the operation of transfer order dated 24.08.2020 till the disposal of the main petition. The order dated 18.09.2021 was challenged before the Hon'ble High Court of Himachal Pradesh by way of filing writ petition

which was disposed off by the Hon'ble High Court vide order dated 07.07.2021, mentioned hereinbefore ibid .

41. In the attendant facts and circumstances of the case, there was continuous litigation/industrial dispute raised between the parties and even the reference no. 138 of 2019 is still pending on the files of this Court for the consideration of final disposal. The petitioner not allowed to join at Chambaghat despite the fact that her transfer has been stayed by this Tribunal vide order dated 18.09.2021.

42. For the foregoing reasons, in view of my entire discussion and observation, the transfer order dated 24.08.2020 transferring the petitioner to a distinct place (Garhwa, Jharkhand) during the pendency of the dispute needs to be interfered with as the same has been issued, actuated with malafide intention and by practicing unfair labour practice and for the sake of victimization of the petitioner, which is in violation of the provisions of the Act. Consequently, the transfer order dated 24.08.2020 (P-23 or RW-1/G) issued by the respondent management whereby the petitioner was ordered to be transferred from Chambaghat Unit to Garhwa, Jharkhand is hereby set aside and quashed with the result the respondent management is directed to allow the petitioner to work at Chambaghat Unit as she was working prior to her transfer.

43. With all humility, the law shown to me by respective counsel for the parties is no longer res-integra, however, as per the specific directions issued by the Hon'ble High Court vide order dated 07.07.2021, this Court/Tribunal shall consider the case on its own merits, and specific directions passed by the Hon'ble High Court of Himachal Pradesh to decide the lis finally as expeditiously as possible and in any event on or before 30.09.2022. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3

44. In support of these issues no specific evidence has been led from the side of the respondent company which could establish satisfactorily as to how the present petition is not maintainable in the present form and why this Court/Tribunal has no jurisdiction to try and decide the present petition. However, by aggrieved with the transfer order dated 24.08.2020, issued by the respondent management, the present petition has been filed by the petitioner which is legally maintainable in the present form and this Court has the territorial jurisdiction to try and decide the present petition. Thus, these issues are decided against the respondent.

FINAL ORDER/RELIEF

45. As a sequent effect to my findings on issues No. 1 to 3 above, the application filed under section 33-A of the Act is **allowed**. Resultantly, the **transfer order dated 24.08.2020 is hereby set aside and quashed**. The respondent company is directed to **allow the petitioner to work at place i.e. Chambaghat unit, where she was working prior to her transfer**.

46. Let a copy of this award/order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 1st day of October, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

Certified that Page No.1 to 28 of the Order have been signed by me.

Sd/-

(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum- Labour Court,
Shimla.

CHANGE OF NAME

I, Amar Singh Thakur s/o Sh. Lachhi Ram Thakur, r/o Village Kanhal, P.O. Kedi, Tehsil Nerwa, District Shimla (H.P.) declare that I have changed my name from Amar Singh Thakur s/o Sh. Lachhi Ram Thakur to Amar Singh Rathour s/o Sh. Lachhi Ram for all purposes in future.

AMAR SINGH THAKUR,
s/o Sh. Lachhi Ram Thakur,
r/o Village Kanhal, P.O. Kedi,
Tehsil Nerwa, District Shimla (H.P.)